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No. 226

Supreme Court of the United States

OCTOBER TERM, 1952

J. LAURITZEN, *Petitioner*,

v.

EVALD JOHANN LARSEN, *Plaintiff-Respondent*.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF THE ROYAL DANISH GOVERNMENT, AS AMICUS CURIAE, IN SUPPORT OF PETITION

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The Royal Danish Government, as *amicus curiae,* respectfully submits this brief in support of the petition for certiorari in this case.

INTEREST OF THE ROYAL DANISH GOVERNMENT

The Royal Danish Government regards the decision below as constituting the abandonment by the United

States of the internationally accepted rule of comity that the law of the flag shall govern the internal affairs on board a vessel. Such a change in the substantive law to be applied to Danish ships is of grave concern to the Kingdom of Denmark.

The decision below would subject Danish shipowners to additional liability for injury to some seamen, but not to others who suffered identical injuries in a Danish or other non-American port, even though all members of the crew were Danish nationals serving on the same ship.

The decision below would impose an additional financial burden on Danish shipowners and thus reduce the maritime foreign exchange earnings upon which Denmark is so dependent. It would also cause confusion and dissension within the crews of Danish vessels.

SUMMARY OF ARGUMENT

The case raises an important question of the international applicability of a federal statute providing a remedy for injured seamen. The construction of the statute by the court below constitutes a change in the foreign policy of the United States—an abandonment of the principle of international comity that the "law of the flag" shall govern internal affairs on board ship. On a matter of such international importance the decision of the Supreme Court is appropriate.

There is a direct conflict between the court below and the New York Court of Appeals. There is also a division of opinion within the Court of Appeals for the Second Circuit.

The results of the decision below impose an unreasonable discrimination as among seamen on the same vessel who signed on in different ports.

ARGUMENT

1. Under the decision below the United States abandons the principle of international comity that the law of the flag shall govern employment relations on board ship. The practice of maritime nations has long been to allow the internal affairs of a ship to be governed by the law of the country whose flag the ship flies. On this point there is no disagreement. Judge Learned Hand, in his dissenting opinion in *Kyriakos* v. *Goulandris*, 151 F. 2d 132, 139, (2d Cir. 1945) stated:

> "As my brothers agree, it is generally accepted law that in all matters relating to 'the internal economy or discipline' of a ship 'the law of the flag' controls. I have gathered in the margin* a number of decisions which invoke this principle in varying applications; nobody disputes it; and it seems to me most undesirable, except for some pressing reason of domestic policy, to disregard it."

Although the principle of international comity is clear, it is far from clear that the Jones Act, 41 Stat. 1007 (1920), 46 U.S.C. § 688 (1946), was intended to modify the position of the United States with respect to that principle. The phraseology of the Jones Act (Petition, p. 4) certainly does not require such an interpretation *ex necessitate*.

Each of the two opinions relied upon by the court below recognized the dubious nature of the construction being applied to the Jones Act. In *Kyriakos* v. *Goulandris*, *supra*, which held that the Jones Act applied where the injury occurred in a United States port, Judge Augustus Hand admitted:

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* Footnote omitted.

"... the matter is doubtful ...." (151 F. 2d at 136)

In the more recent case of *Taylor* v. *Atlantic Maritime Co.*, 179 F. 2d 597 (2d Cir. 1950), *cert. denied*, 341 U. S. 915 (1951), Judge Learned Hand stated:

> "To Judge Swan and me it seems, on the other hand, that, before we impute to Congress the will to change the long settled international understanding that the law of the flag controls in such matters, we should find a more definite expression of that purpose." (179 F. 2d at 600)

The decision of the court below, involves the construction of a federal statute; the result is admittedly doubtful; and the question has not been passed upon by this Court.

That the question is substantial there can be no doubt. As Judge Learned Hand in his dissenting opinion in *Kyriakos* v. *Goulandris, supra*, said:

> "Moreover—and this, I think, we should treat most seriously—it must often be irritating to the state of the flag for the state of a port of call to insist that its own notions of what is just between owner and crew shall supersede those satisfactory to the first state." (151 F. 2d at 139).

The decision of a major maritime country to abandon the basic conflict-of-laws rule for maritime cases is certain to have repercussions on the policies and laws of other countries. If the country in which a seaman signs articles insists upon applying its laws governing compensation for torts to injuries occurring in any part of the world, there will be pressure on other governments to apply their social laws to vessels that call at their ports and to sailors who sign articles there.

The international principle that the internal affairs of a ship are subject only to the laws of one country will have been abrogated.

2. The decision of the court below is in direct conflict with the decision of the New York Court of Appeals in *Sonnesen* v. *Panama Transport Co.*, 298 N. Y. 262, 82 N. E. 2d 569 (1948), *cert. denied*, 337 U. S. 919 (1949).

In the *Sonnesen* case, as in the case at bar, a foreign seaman signed on a foreign vessel in a port of the United States. In that case, as in this, negligence attributable to the owner occurred while the vessel was out of the territorial waters of the United States.

In the *Sonnesen* case, the New York Court of Appeals held that the Jones Act was inapplicable to

> "... a seaman of foreign residence and nationality, suing a non-American ship owner for an alleged tort committed on a non-American ship on the high seas. ... Nor does the signing of articles in an American port bring American law into the case." (298 N. Y. at 267, 82 N. E. 2d at 570).

In the instant case the District Court judgment in favor of the seaman for injury resulting from negligence which occurred in Havana, Cuba, was affirmed in a per curiam opinion of the Circuit Court of Appeals for the Second Circuit. 196 F. 2d 220 (1952).

Hence the conflict between the New York Court of Appeals and the Circuit Court of Appeals for the Second Circuit is direct.

In addition, an examination of the two cases, cited in the per curiam opinion below as controlling, reveals unique disagreement within the Circuit Court itself.

The first of these cases, *Kyriakos* v. *Goulandris, supra,* involved a Greek seaman who had signed on a Greek vessel in a United States port for a voyage beginning and ending in the United States, and who suffered injury in a United States port, due to negligence attributable to the owner. As for the right of the seaman to obtain relief under the Jones Act, a majority of the Court, consisting of Judges Augustus Hand and Frank, concluded:

> "Although the matter is doubtful we believe that he can." (151 F. 2d at 136)

Judge Learned Hand dissented, noting that he could "discover no reason of policy or of authority for displacing" the law of the flag by the Jones Act (*id.*, at 139).

The other case cited in the per curiam opinion below, *Taylor* v. *Atlantic Maritime Co., supra,* involved negligence on the high seas in failing to provide proper care for a foreign seaman on a foreign vessel, who had developed tuberculosis. The Court reluctantly held that the Jones Act afforded relief by virtue of the fact that the seaman had signed articles of employment in a United States port.

After observing that the result was "not as free from doubt as we could wish" (179 F. 2d at 598), Judge Learned Hand, who wrote the opinion, explained the division of views within the Court:

> "Judge Clark thinks that, since the overriding purpose of the Jones Act is to protect seamen, it should be understood to include alien seamen and that the law of the flag must yield. . . . To Judge Swan and me it seems, on the other hand, that, before we impute to Congress the will to change the

long settled international understanding that the law of the flag controls in such matters, we should find a more definite expression of that purpose. We of course recognize that it is only a question of interpreting the statute, not of power;[16] but the possible consequences of the innovation seem to us to forbid its ready assumption under the facile phrase of the 'policy of the Act.' Nor does the possible disadvantage, at which our view might put American seamen, seem to us considerable enough to imply such a purpose, for there will be, we should suppose, only rare occasions when American seamen will find themselves forced to accept the greatly inferior standards of wages and living which prevail on most, if not all, foreign ships. Moreover, we both find strong support for our view in the decision of the Court of Appeals in Sonnesen v. Panama Transport Company,[17] which is on all fours with the case at bar. Nevertheless, in spite of what we should hold, were we free, we think that, although Kyriakos v. Goulandris, supra,[18] can be distinguished because the injury took place on shore, the rationale of the opinion went further; and that it construed the Jones Act as imposing its terms upon all owners who sign on crews in an American port. We do not think it fitting (especially in my own case) to distinguish that decision by a circumstance which was not made pivotal; but rather that we should accept and apply its doctrine as broadly as it seems to have been intended to go." (179 F. 2d at 600)

Thus a majority of the court which decided the *Taylor* case in 1950 agreed here with the contrary holding

16 17 and 18 Footnotes omitted

of the New York Court of Appeals in the *Sonnesen* case. The majority, however, felt bound by the rationale of the circuit court's opinion in 1945 in the *Kyriakos* case, *supra*, to extend that decision and hold the Jones Act applicable not only to torts in the United States but to torts anywhere in the world. The answer to the important federal question which this case presents should not depend on the fortuitous circumstance that the *Taylor* case arose in 1950 rather than in 1945.

3. The decision below would necessarily result in discriminatory treatment as among Danish seamen on board the same vessel. Under the decision a Danish shipowner's liability to some of his seamen for injuries would be greater than his liability to other seamen of the same rating and nationality. Danish seamen who signed on in the United States would have the double protection of Danish laws and of the Jones Act; other Danish seamen would not. Such a situation would inevitably create a difficult problem of morale within the crew. As a matter of practicality, moreover, the problem could not be solved by establishing compensating differentials in the rates of pay for such seamen.

The discrimination as among crew members and the consequent difficulties for shipowners would undoubtedly become worse with the passage of time. As other countries imposed their notions regarding working conditions or terms of employment for seamen who sign on in their ports, a shipowner might be confronted with half a dozen different standards of liability toward different seamen of the same nationality on the same ship.

It has been urged that the Jones Act must be applied to foreign seamen on foreign ships in foreign ports, if the seamen signed articles in the United States, in order

to prevent discrimination against American seamen. This suggestion would appear to be specious in view of the difference between wages on foreign and American ships.

CONCLUSION

Thus it is seen that the instant case raises a substantial federal question on which there is an admitted conflict of decisions between the New York Court of Appeals and the Circuit Court of Appeals for the Second Circuit, and a division of opinion within the latter court. The petition for certiorari should therefore be granted and a definitive decision rendered by the Supreme Court in the exercise of its supervisory powers.

Respectfully submitted,

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September 30, 1952